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S.J. Res. 1 — The Crime Victims' Rights Amendment

Calendar No. 271

The Judiciary Committee reported S.J. Res. 1 favorably, without amendment, with the support of all Republicans (with Senator Specter not voting) plus that of Senator Feinstein, on September 4, 2003. S. Rept. No. 108-191; additional and minority views filed.

Noteworthy

- On Tuesday, April 20, the Majority Leader's designee moved to proceed to S. J. Res. 1 and then filed a cloture petition on that motion. Under Senate Rule XXII, the cloture vote would occur on Thursday, April 22.
- Chief amendment sponsors Senators Kyl and Feinstein first proposed to grant crime victims constitutional rights in 1996. In April 2000, the Senate debated a proposed constitutional amendment for two days, but the Senate has never voted on the amendment or on cloture on the amendment itself.
- Presidents George W. Bush and Bill Clinton both have endorsed a constitutional amendment to recognize crime victims' rights, as have Attorneys General John Ashcroft and Janet Reno. Nearly all state attorneys general, the National Association of District Attorneys, and victims' rights groups such as Mothers Against Drunk Driving (MADD) have joined them in supporting this effort.

Background

According to the Department of Justice, more than 5 million violent crimes are committed in America every year.¹ For more than 20 years, activists and political leaders have

¹ Criminal Victimization in the United States for 2002, Bureau of Justice Statistics, Department of Justice (December 2003), at Table 1.

been seeking to ensure that the victims of these crimes have constitutional rights in the criminal justice process. The rights they seek to have recognized are several:

- Victims seek a constitutional right to receive notice of public events related to the criminal prosecution, be that a bail hearing, a trial date, a sentencing hearing, or a later parole hearing.
- Victims seek a constitutional right to be present during those proceedings, and to have their voices heard at any stage in the process.
- Victims seek a constitutional right to receive notice when the criminal who victimized them is released on parole or escapes from prison.
- Victims seek a constitutional right to have their safety taken into account by courts and parole boards before a criminal suspect or convict is released.
- Victims seek a constitutional right to protection against unreasonable delays in criminal prosecutions.

These proposed rights would ensure that crime victims are not shut out of the process and that their legitimate interests are considered. As Harvard Law School professor Laurence Tribe and then-Professor (now federal Judge) Paul Cassell have explained, these proposed constitutional rights “are the very kinds of rights with which our Constitution is typically and properly concerned — rights of individuals to participate in all those government processes that strongly affect their lives.”²

These rights are not new. In floor debate on a similar constitutional amendment in 2000,³ Senator Feinstein explained that at the time of the Constitution’s adoption, public prosecutors were rare, and crime victims were considered “parties” and acted as their own prosecutors on criminal matters.⁴ The Founders, then, had no need to create special constitutional protections for victims because the modern practice — public prosecutors who act independently of crime victims — was not foreseen. In the meantime, the victims largely have been shut out of the process.

The move to enact a constitutional amendment to protect victims’ rights is the result of a decades-long effort — and failure — to guarantee these protections at the state level and through federal statutes. This failure is not due to lack of effort. Public support for victims’ rights protections is strong,⁵ so it is not surprising that 33 states have passed a variety of state constitutional amendments seeking to protect victims’ rights, and that all 50 states have some

² Laurence Tribe and Paul Cassell, “Embed the Rights of Victims in the Constitution,” *Los Angeles Times*, July 6, 1998; see also Committee Report for S.J. Res. 1, S. Rept. No. 108-191, at 10-11 (hereinafter “Committee Report”).

³ See debate on S.J. Res. 3 (106th Cong.) in the *Congressional Record* for April 25-27, 2000.

⁴ *Congressional Record*, April 25, 2000 (106th Cong., 2nd Sess.), at S2822 (discussing academic research on early American criminal prosecutions). Senator Feinstein amplified this point in a later speech on the floor on May 2, 2000.

⁵ For example, when Maryland voters considered a state constitutional amendment to protect victims’ rights in 1994, it prevailed with 92% of the vote. Maryland Board of Elections data, on file with Senate Republican Policy Committee.

form of victims' rights measures at a statutory or court-based level.⁶ But these state efforts have failed to provide consistent protections to victims.

There is more than ample evidence of state-level failures. A study by the National Victim Center found that many victims were still being denied their rights, even in states having what appeared to be strong legal protection.⁷ The study examined four states – two with relatively “strong” victims' rights protections, and two with relatively “weak” protections. The findings were striking:

- Nearly half of the victims (44 percent) in states with strong protections for victims, and more than two-thirds of the victims in states with weak protections, did not receive notice of the sentencing hearing.
- Although the “strong” states had laws requiring that victims be notified of plea negotiations and the “weak” states did not, victims in all four states were equally unlikely to be informed of such negotiations. Laws requiring notification of plea negotiations were not enforced in *nearly half* of the violent-crime cases included in the study.
- Substantial numbers of victims in both “strong” and “weak” states were not notified of various stages in the process, including bail hearings (37 percent not notified in strong protection states, and 57 percent not notified in weak protection states); the pretrial release of perpetrators (62 percent not notified in strong protection states, and 74 percent in weak); and sentencing hearings (45 percent in strong, 70 percent in weak).⁸

A related report based on the same database found that racial minorities are most severely affected under the existing patchwork of victims' protections.⁹

Given that public support for victims' rights is so strong, and that all the states have some nominal protection for victims, why are victims not protected adequately? One answer lies in the fact that criminal defendants have a plethora of rights that are protected by the Constitution that are applied to exclude victims' rights. Our Constitution values criminal defendants' rights more than crime victims' rights; indeed, our Constitution does not protect crime victims' rights at all. When a defendant claims that the Constitution requires that the victim be denied access to the process, the victim has no corollary constitutional right to rely upon. Prosecutors — chiefly interested in guaranteeing the conviction of criminal defendants — understandably will brush aside the victim's interests if they fear that the court will rule that the defendant's rights have been violated. Thus, some victims of the Oklahoma City Bombing were told that if they attended the trial, they could jeopardize the conviction of Timothy McVeigh.¹⁰

⁶ See Committee Report at 3.

⁷ U.S. Department of Justice, Office for Victims of Crime, *New Directions From the Field: Victims' Rights and Services for the 21st Century* 10 (1998); see Committee Report at 13-15.

⁸ See Committee Report at 13-15.

⁹ National Victim Center, “Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims -Sub-Report: Comparison of White and Non-White Crime Victim Responses Regarding Victims' Rights,” June 5, 1997, at page 5; see Committee Report at 14.

¹⁰ See Committee Report at 21. See also discussion of Oklahoma City case in *Congressional Record*, April 25, 2000, at S2828, S2900.

In addition, the practical reality is that, despite their recognition at the state level, victims' rights simply are not taken sufficiently seriously by the criminal justice system. As one law professor testified, victims receive little protection "whenever they come into conflict with bureaucratic habit, traditional indifference, [or] sheer inertia."¹¹ Even opponents of the amendment have acknowledged this fact. The then-president of the National Legal Aid and Defenders Association testified to the House Judiciary Committee that state constitutional amendments "have been treated as mere statements of principle that victims ought to be included and consulted." She further explained that "a State constitution is far . . . easier to ignore than the Federal one."¹²

Whether due to concerns about convicts' and defendants' possible arguments or due to bureaucratic indifference or sloppiness, these state efforts have proven woefully inadequate at protecting victims' rights.

Constitutional Amendment Provisions

In short, the Crime Victims' Rights Amendment gives victims basic rights to be informed, present, and heard in the criminal justice system, and it grants constitutional recognition to their important role and status in that system. Specifically, the Crime Victims' Rights Amendment provides victims of violent crimes the constitutional rights to be notified of and included in public proceedings. It guarantees a victim's right to be heard at plea, sentencing, reprieve, and pardon proceedings. It recognizes a right to be notified of the release or escape of the accused. Also, the amendment gives a victim the right to an interest in proceedings without unreasonable delay and in adjudicative decisions that duly consider the victim's safety. Finally, S.J. Res. 1 grants victims the right to consideration of their just and timely claims for restitution from a convicted defendant: those who pled guilty, are found guilty, or entered a plea of no contest.

The full text of S.J. Res. 1 follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States:

Article —

SECTION 1. The rights of victims of violent crime, being capable of protection without denying the constitutional rights of those

¹¹ See Committee Report at 14.

¹² Testimony of Ellen Greenlee, President, National Legal Aid and Defenders Association, to House Judiciary Committee, July 11, 1996, available at <http://www.house.gov/judiciary/110.htm>.

accused of victimizing them, are hereby established and shall not be denied by any State or the United States and may be restricted only as provided in this article.

SECTION 2. A victim of violent crime shall have the right to reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused; the rights not to be excluded from such public proceeding and reasonably to be heard at public release, plea, sentencing, reprieve, and pardon proceedings; and the right to adjudicative decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender. These rights shall not be restricted except when and to the degree dictated by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity.

SECTION 3. Nothing in this article shall be construed to provide grounds for a new trial or to authorize any claim for damages. Only the victim or the victim's lawful representative may assert the rights established by this article, and no person accused of the crime may obtain any form of relief hereunder.

SECTION 4. Congress shall have power to enforce by appropriate legislation the provisions of this article. Nothing in this article shall affect the President's authority to grant reprieves or pardons.

SECTION 5. This article shall be inoperative unless it has been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within 7 years from the date of its submission to the States by the Congress. This article shall take effect on the 180th day after the date of its ratification."

Administration Position

The Administration strongly supports S.J. Res. 1. The President said this past weekend, "[M]y Administration continues to endorse the bipartisan Crime Victims' Rights Amendment. By allowing victims of violent crime to be present and heard at public proceedings and by giving them access to information, such an amendment would guarantee victims' inclusion in the criminal justice process without threatening the rights of defendants."¹³ A formal Statement of Administration Position may be available when S.J. Res. 1 reaches the Senate floor.

¹³ Presidential Proclamation, April 17, 2004, available at www.whitehouse.gov.

Cost

No cost estimate is available at this time. Some of the amendment provisions will effectively impose costs on federal and state prosecutors and courts, just as defendants' rights do. Three-fourths of states must ratify this amendment, however, for it to become part of the Constitution.

Other Views

Senator Hatch, who supported S.J. Res. 1 in the Judiciary Committee, filed additional views to ensure that nothing in the amendment be construed to limit Governors' ability to grant pardons, and expressed reservations at the exclusion of victims of non-violent crimes.¹⁴ Senator Hatch nonetheless supports passage of S.J. Res. 1 in its current form.

Senators Leahy and Kennedy filed additional views arguing that the policy goals of the amendment were appropriate, but that the goals could be met by statutory alternatives. They discuss briefly their alternative legislation, S. 805, the Crime Victims Assistance Act, summarizing it as "accomplish[ing] three major goals. It provides enhanced rights and protections for victims of federal crimes. It assists victims of state crimes through grants to promote compliance with state laws on victims' rights. And it improves the manner in which the Crime Victims Fund is managed and preserved."¹⁵

Senators Leahy, Kennedy, Kohl, Feingold, Schumer, and Durbin filed minority views dismissing the effort to protect crime victims as akin to the Prohibition amendment, although they acknowledged that the treatment of crime victims is of "central importance to a civilized society."¹⁶ They argue that Congress and the states have the power to protect victims' rights without a federal constitutional amendment, but they offer no evidence that past state and local efforts have been effective or respected in courts when challenged by criminal defense counsel. They argue that statutes are preferable to constitutional amendments.

Expected Amendments

No "friendly" amendments are anticipated. However, Democrat-sponsored amendments similar to those offered in the Judiciary Committee may be offered on the floor. The primary anticipated amendments would be as follows:

¹⁴ Additional Views of Senator Hatch, S. Rept. No. 108-191, at 49-51.

¹⁵ Additional Views of Senators Leahy and Kennedy, S. Rept. No. 108-191, at 52.

¹⁶ Minority Views to S. Rept. No. 108-191, at 56.

Possible Leahy Statutory Substitute — Senator Leahy offered a statutory substitute amendment in the Judiciary Committee (introduced as S. 805) that was defeated. He may offer a similar amendment on the floor.

Possible Durbin Amendment — Senator Durbin offered an amendment in the Judiciary Committee that would give defendants a “trump card” whenever a court decided that victims’ rights conflicted with defendants’ rights.